

(ii) The objections and requests for hearing filed by the Dockets Management Branch;

(iii) If the proceeding involves a color additive regulation referred to an advisory committee in accordance with section 721(b)(5)(C) of the act, the committee's report and the record of the committee's proceeding; and

(iv) The notice denying a formal evidentiary public hearing.

(2) If the proceeding involves an order—

(i) The notice of opportunity for hearing;

(ii) The requests for hearing filed by the Dockets Management Branch;

(iii) The transcripts, minutes of meetings, reports, FEDERAL REGISTER notices, and other documents constituting the record of any of the optional procedures specified in §12.24(c) used by the Commissioner, but not the transcript of a closed portion of a public advisory committee meeting; and

(iv) The notice denying the hearing.

(c) The record specified in paragraph (b) of this section is the exclusive record for the Commissioner's decision on the complete or partial denial of a hearing. The record of the proceeding will be closed as of the date of the Commissioner's decision unless another date is specified. A person who requested and was denied a hearing may submit a petition for reconsideration under §10.33 or a petition for stay of action under §10.35. A person who wishes to rely upon information or views not included in the administrative record shall submit them to the Commissioner with a petition under §10.25(a) to modify the final regulation or order.

(d) Denial of a request for a hearing in whole or in part is final agency action reviewable in the courts, under the statutory provisions governing the matter involved, as of the date of publication of the denial in the FEDERAL REGISTER.

(1) Before requesting a court for a stay of action pending review, a person shall first submit a petition for a stay of action under §10.35.

(2) Under 28 U.S.C. 2112(a), FDA will request consolidation of all petitions on a particular matter.

(3) The time for filing a petition for judicial review of a denial of a hearing on an objection or issue begins on the date the denial is published in the FEDERAL REGISTER, (i) When an objection or issues relates to a regulation, if a hearing is denied on all objections and issues concerning a part of the proposal the effectiveness of which has not been deferred pending a hearing on other parts of the proposal; or (ii) when an issue relates to an order, if a hearing is denied on all issues relating to a particular new drug application, new animal drug application, device premarket approval application or product development protocol, or biologics license. The failure to file a petition for judicial review within the period established in the statutory provision governing the matter involved constitutes a waiver of the right to judicial review of the objection or issue, regardless whether a hearing has been granted on other objections and issues.

#### **§12.30 Judicial review after waiver of hearing on a regulation.**

(a) A person with a right to submit objections and a request for hearing under §12.20(d) may submit objections and waive the right to a hearing. The waiver may be either an explicit statement, or a failure to request a hearing, as provided in 12.22(a)(4).

(b) If a person waives the right to a hearing, the Commissioner will rule upon the person's objections under §§12.24 through 12.28. As a matter of discretion, the Commissioner may also order a hearing on the matter under any of the provisions of this part.

(c) If the Commissioner rules adversely on a person's objection, the person may petition for judicial review in a U.S. Court of Appeals under the act.

(1) The record for judicial review is the record designated in §12.28(b)(1).

(2) The time for filing a petition for judicial review begins as of the date of publication of the Commissioner's ruling on the objections.

#### **§12.32 Request for alternative form of hearing.**

(a) A person with a right to request a hearing may waive that right and request one of the following alternatives: